No. 97-9

Supreme Court, U.S.
FILED
AUG 7 1997
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

HONEYWELL, INC.; HONEYWELL PENSION AND RETIREMENT COMMITTEE, on their own behalf and on behalf of the Honeywell Retirement Investment Plan, Investment Plus Plan of Honeywell, Inc., and Honeywell Retirement Savings Plan; and First Trust National Association,

Petitioners,

v.

MINNESOTA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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REPLY BRIEF FOR PETITIONERS

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August 7, 1997

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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REPLY BRIEF FOR PETITIONERS

In this case the Eighth Circuit—sitting *en banc* and sharply divided with respect to both result and rationale—upheld a Minnesota law that retroactively cancelled obligations owed to petitioners in order to free up funds for Minnesota residents left unprotected in an insurance company insolvency. As we pointed out in our petition, this decision gives too little weight to established principles under the Contract Clause and Due Process Clause, which place severe restrictions on state power to extinguish outstanding debts, whether public or private, even in pursuit

of laudable ends. The critical question is not whether Minnesota may act to assist its own citizens (obviously it can), but whether it may find the means to do so by eliminating the obligations owed to petitioners.

Respondent defends the decision below on two primary grounds, neither of which is well-founded. To begin with, it asserts that "modern standards" of constitutional law allow States great freedom to enact legislation, even retroactive legislation upsetting "settled expectations," in order to serve public goals. *See* Br. in Opp. 13-23; 27-30. What respondent largely ignores, however, is that recent cases of this Court, applying both the Contract Clause and the Due Process Clause, require that a State do more than identify a valid public purpose to be served by its legislation; it must also establish that its decision to abrogate a contractual right, or retroactively alter an obligation, is a reasonable means of achieving that purpose. *See* Pet. 18-21. Respondent, like the Eighth Circuit before it, utterly fails to make that showing.

Respondent thus presses a second argument: that the obligation at issue here, having been embodied in a prior statute, is not subject to any substantial constitutional protection. *See* Br. in Opp. 23-27. This argument itself raises important questions about state power to retract what it has conferred. Furthermore, as advanced by respondent, it rests upon the mistaken view that obligations created by statute are never considered to be contractual in nature—unless they are obligations assumed by the State itself—and thus may be freely, and retroactively, taken away. *See* Br. in Opp. 21 n.15. This theory not only contradicts precedent from this Court, *see, e.g., Coombes v. Getz*, 285 U.S. 434 (1932), but would vastly expand state power to alter, after-the-fact, the structure of legal transactions and to destroy outstanding property interests. This Court has never gone so far as to declare that a State may eradicate "settled expectations" of pay-

ment merely because the funds could be put to other use, and it should reject the invitation to do so now.

1. Respondent goes on at considerable length about the financial problem caused by the insolvency of Executive Life. Even if its portrayal were accurate,[1] however, it is largely beside the point. Petitioners do not question that Minnesota has a legitimate interest in protecting Minnesota residents harmed by the insolvency. The question, rather, is whether, despite other readily-available options, it could elect to relieve the Association of its debt to petitioners as the means of providing that protection.

On this issue respondent has remarkably little to say. Although it seems to accept that a State could not seek to assist residents by walking away from its own obligations, *see United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977), it apparently believes that there is no serious obstacle to achieving that end by cancelling the obligations of private entities. But, insofar as the Contract Clause is concerned, that notion has an obvious flaw: the principal object of that clause was to prevent state legislatures from cancelling the debts of private parties. *See Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 503 (1987); Pet. 18-19. Two decades ago, the Court—while divided on other questions—was unanimous in concluding that the Contract Clause continues to "forbid[] . . . state laws that diminish the duties of a contractual obligor . . . ." *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244 n.16 (1978).

The distinction put forth by respondent is also at odds with familiar principles of due process. Thus, while this

[1] Grouping Executive Life with other companies, respondent talks of "jeopard[y]" to more than "$440 million." Br. in Opp. 1. The Eighth Circuit, referring to Executive Life alone, spoke about possible exposure of $111 million. But, as we have pointed out (and respondent does not contest), "approximately 90% of the value of Executive Life annuities should be recovered as a result of the liquidation proceeding." Pet. 8 n.6.

Court has allowed States to address a particular problem by imposing retroactive liability on entities fairly deemed responsible for the problem, *see e.g., Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1 (1976), it has not declared the existence of a broad power to create retroactive liability in the absence of that nexus. Here, the funds to provide for resident victims of the Executive Life insolvency are being diverted from other victims of that insolvency (petitioners and, ultimately, the non-resident beneficiaries of their trust plans) even though full protection for their investments had been unambiguously provided in prior law. *See Honeywell, Inc. v. Minnesota Life & Health Ins. Guar. Ass'n*, 518 N.W.2d 557 (Minn. 1994).[2] To relieve the Association of that debt seems, if anything, an even more inapt means of serving a public goal than allowing the State to declare its own obligations null and void.

It is thus an enormous, and wholly unwarranted, step to find (as the Eighth Circuit did) that States may extinguish the obligations of private parties as an indirect means of financing public ends. Were that view correct, it would mean that, even if the Association and the Trustee had entered into a written contract providing (as the statute provided) that the Association would "guarantee [and] assume" the obligations of Executive Life, and further providing (as the Minnesota courts determined) that the entire amount of a Guaranteed Investment Contract held by a resident trustee was such an obligation, the State nevertheless could cancel the right to payment on the ground that it wished to conserve Association re-

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[2] The abrogation of an obligation to plan trustees (and, thereby, to non-resident beneficiaries), as a means of financing benefits to uncovered residents, would be comparable to a decision by Congress to impose the costs of black-lung benefits retroactively on other coal miners, rather than on the companies that employed them and profited from their work. *Compare Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1 (1976).

sources for its own preferred beneficiaries. This is an astonishing proposition, yet one that follows inexorably from the constitutional theory relied on by respondent. Whether analyzed under the Contract Clause or the Due Process Clause, this redirection of funds, at the expense of a narrow class of obligees, runs contrary to the basic principle against "forcing some people alone to bear public burdens which . . . should be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40, 49 (1960).[3]

2. Respondent takes a second tack as well: that no obligation worthy of serious constitutional protection actually existed. Stressing that the obligation was embodied in a statute, respondent advances the view that its elimination by a later statute, even on a retroactive basis, is of little constitutional moment. This theory, however, also raises more questions than it resolves.

Respondent sets forth its proposed rule in bold, absolute terms: "[a] statute is a statute, and a contract is a contract. Unless the state itself is obligated by the statute, a statute is not a contract." Br. in Opp. 21 n.15. The first problem with this argument, of course, is that the Eighth Circuit declined to accept it. Five dissenting judges and two concurring judges concluded that the rights conferred by the statute (prior to amendment) were contractual in nature and thereby protected by the Contract Clause. Pet. App. 19a-21a (concurring opinion); 26a-27a (dissenting opinion).

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[3] This Court has given particularly close scrutiny to legislation that targets a small class of private parties. *See Allied Structural Steel*, 438 U.S. at 250. The 1992 Minnesota Act amply fits that description, regardless of whether Honeywell was the only company affected or was one of a handful of companies. *See* Br. in Opp. 8 n.3. In the court of appeals, it should be noted, respondent itself stated that, of the relevant companies, "only Honeywell had a plan trustee which was domiciled in Minnesota." C.A. 8 Br. at 3.

More importantly for present purposes, this Court itself has rejected the notion that rights embodied in state law are outside the protection of the Contract Clause. In *Coombes*, for example, this Court recognized that obligations created by a rule of law—there, a provision of the California Constitution—could be the basis for a cause of action arising "upon the contractual liability created in pursuance of the rule" (285 U.S. at 442), even though the obligor had no direct contractual relationship with the creditor.[4] Moreover, in *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 429-30 (1934), the Court expressly stated that certain state laws "enter into and form a part of [a contract], as if they were expressly referred to or incorporated in its terms." *See General Motors Corp. v. Romein*, 503 U.S. 181, 189 (1992) (same). *See also Steamship Co. v. Joliffe*, 69 U.S. (2 Wall.) 450 (1865) (statutory obligation binding on parties to a transaction within its scope). It is thus well-settled that *some* obligations imposed by statute or other provisions of state law are properly treated as part of, or legally equivalent to, a contractual relationship.

Once it is accepted that statutory rights and contractual rights are not mutually exclusive, the question then turns to whether a particular law gives rise to an obligation protected by the Contract Clause. That inquiry requires a close examination of the text of the law and the nature of the duty at issue. *See Indiana ex rel. Anderson v. Brand*, 303 U.S. 95, 104-05 (1938). Here, the Minnesota statute, in plain terms, required the Association to "guarantee, assume or reinsure . . . the covered policies of

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[4] Respondent argues that the point was "conceded" in *Coombes*. *See* Br. in Opp. 17-18. But the issue is one of federal law, and the Court thus could not apply the Contract Clause, regardless of any concession, if (as respondent says) a statute never creates a right subject to its protection. *See Coombes v. Getz*, 285 U.S. at 449-50 (Cardozo, J., dissenting) (Court "determines for itself whether within the meaning of the Constitution the product is a contract to be protected by the power of the nation").

residents" (which included petitioner Trustee) and further required it to "make or cause to be made prompt payments of the impaired insurer's contractual obligations which are due and owing to residents." Minn. Stat. Ann. ch. 61B.06 subd. 2. Given the explicit language of these responsibilities, and their direct linkage to contracts between insurers and resident policy holders, it is most appropriate, for the purpose of applying constitutional standards, to treat the Association as affirmatively guaranteeing and then directly taking on the "contractual obligations" of the failed insurer. *See Indiana ex rel. Anderson v. Brand*, 303 U.S. at 104-05 (noting that statute speaks in contractual terms). The Contract Clause would unquestionably come into play in the event that the terms of the statute had been directly incorporated into a written contract—even if they were included solely because of the mandatory nature of the law itself—and it is hard to see why the protection of that Clause should be lost in the absence of incorporation when the obligations are no less binding. In either case, the Association would be liable to the Trustee, and in either case that fully-matured liability would have been cancelled by the subsequent legislation.

Although respondent clearly thinks otherwise, state law and contracts do not intersect only with respect to matters of "validity, construction, or enforcement." *See* Br. in Opp. 24 (quoting Pet. App. 10a); *see also General Motors Corp. v. Romein*, 503 U.S. at 189.[5] Quite apart from the fact that this Court has never laid down any such blanket rule, and the fact that to do so would require a repudiation of *Coombes*, that view would perversely give States greater power to extinguish substantive rights than to alter remedies to enforce those rights. In *Blaisdell*,

[5] We note that, in quoting from the plurality opinion below and the opinion of this Court in *Romein*, respondent tries to fashion its absolute principle by leaving out the limiting words "[f]or the most part," which appear in both opinions.

however, the Court, quoting the same language relied on by respondent, made clear that even the acknowledged power of a State to amend remedial laws extended only up to the point that its action impaired a substantive right. 290 U.S. at 430. *See also W.B. Worthen Co. v. Kavanaugh*, 295 U.S. 56 (1935); *W.B. Worthen Co. v. Thomas*, 292 U.S. 426 (1934). While the importance of this distinction has waned over the years, *see United States Trust Co.*, 431 U.S. at 19 n.17, it would wholly invert the historical understanding to declare now that *only* the terms of state remedial laws are sheltered from abrogation by the Contract Clause.

Respondent makes a corollary effort to suggest that the obligation imposed by the statute was somehow uncertain (and presumably, therefore, only clarified and not extinguished). *See* Br. in Opp. 27-28. But this argument makes no headway at all. Examining that very question, the Minnesota Supreme Court expressly held "that resident trustees who own unallocated annuity contracts are unambiguously entitled to coverage under the terms of the Act prior to the Amendment." 518 N.W.2d at 561. *See also id.* ("there can be no doubt that a plan trustee who owns an unallocated annuity contract is a person to whom contractual obligations are owed.") Indeed, it was the very clarity of the obligation that led the Minnesota court to declare that the prior law was *not* (as respondent had argued) "an unintended windfall for non-resident employees who are participants in pension plans with a Minnesota trustee." *Id.*

Although this opinion was handed down after the 1992 amendment to the law, the Minnesota Supreme Court relied in large part on an earlier decision of the state court of appeals—handed down in 1987, *five years* before the law was altered—holding that the "covered policies" under the Act plainly embraced "unallocated annuity contracts," including guaranteed investment contracts. *Minnesota Life and Health Ins. Guar. Ass'n v. Department of Commerce*, 400 N.W.2d 769, 772-74 (Minn.

App. 1987). Respondent tries to avoid the import of that case by contending that it involved issues relating to the assessment base rather than to payments on the guarantee, but that point is utterly irrelevant because (as the Minnesota Supreme Court observed) the assessment base and the payment guarantee are both governed by the single term, "covered policies"—which is what the 1987 decision held plainly to include the guaranteed investment contract. 518 N.W.2d at 562 n.11. The Minnesota Supreme Court, in fact, pointed out that the Association itself had, since the 1987 ruling, "assessed insurers issuing unallocated annuity contracts based upon the amount of premiums received from resident contract owners, not based upon amounts attributable to individual resident beneficiaries." 518 N.W.2d at 562. That behavior would be hard to reconcile with an understanding that "coverage obligations [were] owed solely to resident plan participants." *Id.*[6]

3. All defenses by respondent notwithstanding, the decision of the Eighth Circuit represents a troubling dilution of the protections traditionally afforded against state abrogation of outstanding debts. As the dissent below stated, "[t]he Minnesota Legislature in this case deliberately effected a retroactive change in the law to allow the Association to avoid a $110 million payout." Pet. App. 30a. Yet, focusing largely upon one side of the equation, the majority (like respondent here) omitted any careful inquiry into the reasonableness of cancelling obligations owed to the trustee for non-resident (and, therefore, non-

[6] Respondent makes several references to the 1992 law as "curative" without explaining why, if the court of appeals was in error, the legislature made no effort to fix the statute in the years following its decision. Furthermore, the idea that the coverage of the prior law was misdirected is belied by the fact, noted by the Minnesota Supreme Court, that the laws of 14 States provide coverage to resident holders of an unallocated annuity contract. 518 N.W. 2d at 562. As we discussed in the petition, therefore, the characterization of this law as "curative" would deprive that term of all but the most superficial possible meaning. *Cf. United States v. Carlton*, 512 U.S. 26 (1994).

voting) beneficiaries in order to divert funds to resident beneficiaries. *See* Pet. App. 31a (Arnold, C.J., dissenting) ("[i]t is not a coincidence that most of the people injured by this statute cannot vote for the Minnesota Legislature"). Without proper scrutiny of the means used to serve public ends, however, the result is that contractual obligations may be deemed secure only unless and until a State determines that the funds would be better put to some other use. That disregard of property rights is a departure from long-recognized principles, and this Court should grant review to correct it.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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